

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**J.W., A MINOR, BY AND THROUGH AMANDA WILLIAMS,
GUARDIAN AND NEXT FRIEND**

PLAINTIFF

VS

CASE NUMBER 3:21-cv-00663-CWR-LGI

THE CITY OF JACKSON, ET AL.

DEFENDANTS

**TONY YARBER AND KISHIA POWELL’S MOTION
FOR QUALIFIED IMMUNITY AND TO DISMISS**

Yarber and Powell, through counsel and pursuant to Federal Rule of Civil Procedure 12(c), file this Motion for Qualified Immunity and to Dismiss, seeking dismissal of Counts I, II and III of Plaintiff’s Amended Complaint [Doc. 51]. In support of the requested relief, Yarber and Powell state:

1. In the Amended Complaint, Plaintiff asserts three claims for relief against Yarber and Powell: (1) Count I: 42 U.S.C. § 1983 – Fourteenth Amendment Substantive Due Process – Bodily Integrity; (2) Count II: 42 U.S.C. § 1983 – Fourteenth Amendment Substantive Due Process – State Created Danger; and (3) Count III: Negligence. *See* Am. Compl. [Doc. 51] at 77-86.

2. Each Count fails to state a claim upon which relief may be granted against Yarber or Powell.

3. Yarber and Powell are entitled to the protection afforded by the qualified-immunity defense.

4. Plaintiff has not alleged a state actor’s direct, intentional physical contact with Plaintiff, and, therefore, no violation of bodily integrity.

5. The Fifth Circuit does not recognize a state-created-danger theory of liability.

6. Plaintiff filed the negligence claim (Count III) without giving Yarber and Powell the notice required by the Mississippi Tort Claims Act. That claim also fails to state a basis for Yarber or Powell's individual liability for Plaintiff's alleged injuries.

7. Accordingly, and for the reasons more fully set forth in their accompanying Memorandum in Support, Yarber and Powell request dismissal of Counts I, II and III against them.

8. In further support of the Motion, Yarber and Powell submit the following exhibits:

- Exhibit "A," 2011 State-of-the-City Address;
- Exhibit "B," Jacob Fuller, *City Breaks Ground on Upgrade to Water System*, Jackson Free Press (Mar. 8, 2012);
- Exhibit "C," Mar. 25, 2014 Minutes;
- Exhibit "D," Miss. Bd. of Licensure for Prof. Engineers Licensee Details; and
- Exhibit "E," *First Woman Named Director of Jackson's Public Works Department*, Miss. Link (July 31, 2014).

RESPECTFULLY SUBMITTED, this the 12th day of May, 2022.

/s/ Terris C. Harris

TERRIS C. HARRIS

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*Counsel for Tony Yarber and
Kishia Powell*

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2022, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which served a copy of the foregoing on all counsel of record.

/s/ Terris C. Harris

TERRIS C. HARRIS